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Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

SUPREME COURT

OCTOBER TERM 1986

ROBERT BORIS BEACHBOARD

VERSUS

THE TRUSTEES OF COLUMBIA UNIVERSITY

IN THE CITY OF NEW YORK

ON WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS FOR

THE THIRD CIRCUIT

APPENDIX SUPPLEMENT

ROBERT BEACHBOARD

ROOM 6

408 VICTORIA AVE

GLASSBORO

NEW JERSEY 08028-2246

583

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NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

ROBERT BORIS BEACHBOARD, :

plaintiff, :

v. :

THE TRUSTEES OF COLUMBIA UNIVERSITY: IN THE CITY OF NEW YORK, :

Defendant. :

Civil Action No. 85-365

O P I N I O N

BARRY, District Judge

Beginning in April, 1979, the plaintiff, Robert Boris Beachboard, (hereinafter referred to as "Beachboard"), has filed a series of over forty motions, cases, appeals and administrative actions in three states and the District of Columbia against The Trustees of Columbia University in the City of New York (hereinafter referred to as "Columbia"). The action presently before this court commenced on January 28, 1985, when Beachboard served his initial summons and complaint on Robert E. Allen, a trustee of Columbia who resides in New Jersey. The Hon. Frederick B. Lacey dismissed this complaint pursuant to Fed. Rule Civ. P. 12(b)(6) for failure to state a claim, with leave to amend until November 6, 1985. Beachboard filed his amended complaint on November 6, 1985, serving Kenneth M. Bushell, local counsel for

Columbia.

Columbia has moved to dismiss this amended complaint on four Fed. R. Civ. P. 12(b) grounds: lack of personal jurisdiction, Fed. R. Civ. P. 12(b)(2); insufficient service of process, Fed. R. Civ. P. 12(b)(5); lack of subject matter jurisdiction, Fed. R. Civ. P. 12(b)(1); and failure to state a claim upon which relief can be granted, Fed. R. Civ. P. 12(b)(6). Additionally, Columbia requests legal fees, costs, damages under Fed. R. Civ. P. 11, and an injunction enjoining Beachboard from commencing any further actions in any state, federal or other court or administrative agency against Columbia University or any action the outcome of which would adversely affect Columbia. Beachboard moved to void the appearance of both Mr. Kenneth Bushell and Mr. Byron Golden. He claims that Mr. Bushell is an invalid local

counsel and, consequently, Mr. Golden's pro hac vice appearance is void since he was not joined by local counsel.

Beachboard's motion to strike the appearance of Mr. Bushell as local counsel will be denied. According to D.N.J. Ct. R. 5, an attorney may be designated as local counsel if he is a member of the bar of the court and maintains a bona fide office in New Jersey. Since the Local Rules do not define a "bona fide office", I will, pursuant to D.N.J. Ct. R. 44, look to the New Jersey Court Rules. N.J.Ct.R. 1:21-1(a), defines a bona fide office as "a place where the attorney or a responsible person acting on his behalf may be reached in person and by telephone during normal business hours. A bona fide office is more than a maildrop, a summer home that is unattended during a substantial

portion of the year, or an answering service unrelated to a place where business is conducted."

Beachboard asserts that the address is in a residential area. Nothing in the rules requires use of a commercial space or location in a commercial area for an office. In fact, the rule implies that even a residence would be acceptable so long as it is attended during a substantial portion of the year. Additionally, Beachboard relies on the affidavit of a process server who did not find anyone at Mr. Bushell's office address on a Saturday morning or between 7:10 and 8:10 on a Thursday morning, an utter irrelevancy given that these are not normal business hours. In the same affidavit, the process server stated that he was unable to reach Mr. Bushell by telephone, and

only reached an answering machine. An answering service unrelated to a place where business is conducted is prohibited by N.J.Ct.R. 1:21-1(a). There is no indication in the record, however, that the answering machine was located anywhere other than Mr. Bushell's place of business.

All of the evidence before me leads to the conclusion that it is perfectly appropriate that Mr. Bushell serve as local counsel. This evidence includes Mr. Bushell's certification that he maintains his office in New Jersey, resides in New Jersey, is registered as a practicing attorney in New Jersey, maintains his client files in New Jersey, is listed in the New Jersey Lawyer's Diary and Manual, is registered with the Client's Security Fund of New Jersey, and that his driver's license is issued by the State of New Jersey and lists his New

Jersey residence address.

Mr. Golden's pro hac vice appearance is, thus, valid under N.J.Ct.R. 1:21-2. Plaintiff's motion to disqualify Mr. Bushell and Mr. Golden will be denied.

In New Jersey, the courts have personal jurisdiction to the outer limits of the Constitution. N.J.Ct.R. 4:4-4(c)&(e); Avdel Corp. v. Mecure, 58 N.J. 264 (1971). State jurisdictional limits generally apply to the federal courts. 4 C. Wright & A. Miller, Federal Practice and Procedure §§ 301-16 (1969 ed. & 1985 Supp.). Thus, this court must explore the federal constitutional standards for personal jurisdiction. Once a defendant has raised an objection to personal jurisdiction, it is the plaintiff's burden to establish that defendant has sufficient contacts with the forum to warrant its exercise of personal

jurisdiction over him. Compagnie des Bauxites de Guinea v. L'Union Atlantique S.A. D'Assurances, 723 F.2d 357, 363 (3d Cir. 1983).

According to defendant's affidavit, Columbia has no offices in New Jersey, see Eck v. United Arab Airlines, Inc., 360 F.2d 804 (2d Cir. 1966); S.M. Stein Enterprises, Inc. v. Irish International Air Lines, 236 F. Supp. 71 (E.D. Pa. 1964); conducts no business in New Jersey; solicits no business, by mail or any other means, in New Jersey; distributes no goods in New Jersey, and has no agents authorized to receive service in New Jersey, see Bernardi Bros., Inc. v. Pride Mfg., Inc., 427 F.2d 297 (3d Cir. 1970). The only contact Columbia has with New Jersey is that one of its trustees happens to reside in the state. In response to this affidavit, plaintiff asserts that two

trustees of Columbia reside in New Jersey, one of whom has his business address here also. According to plaintiff, Columbia "is located where each of its members are present." Plaintiff's answering brief, July 8, 1985, at 23. Finally, plaintiff claims that Columbia owns property in New Jersey, but does not describe the property in any way, nor does he offer any evidence supporting his claim.

The question is thus whether these contacts with New Jersey on the part of defendant amount to sufficient contacts to support personal jurisdiction as to it. The minimum contacts test of Hanson v. Denckla, 357 U.S. 235, 253 (1958), states:

> "[I]t is essential in each case that there be some act by which the defendant purposefully avails

itself of the
privilege of
conducting activities
within the forum
state, thus invoking
the benefits and
protections of its
laws."

See World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980); Kulko v. Superior Court of California, 436 U.S. 84 (1978).

Defendant's sole contact with New Jersey consists of, at most, the fact that two of its trustees reside here. Columbia is not located, for business purposes, where each of its members are present. According to the law that reorganized Columbia in 1810, "eleven of the said trustees, lawfully convened, as is herein after directed, shall be a quorum for the dispatch of all business, except for the disposal of real estate,

or for the choice or removal of a President, for either of which purpose there shall be a meeting of at least thirteen trustees." 1810 N.Y. Laws 85. Considering the need for at least eleven trustees

to be present in order to conduct business, the presence of two trustees in their separate residences would not create a quorum for business purposes. Additionally, the mere presence of a trustee, officer or employee of a corporation in a state does not create contacts with a state sufficient to support general personal jurisdiction. Hanson v. Denckla, supra; Simpson v. Lifespring, Inc., 572 F. Supp. 1251 (E.D. Pa. 1983). According to the Third Circuit, "it is undisputed that mere service on a corporate agent cannot establish personal jurisdiction without a

minimum contacts inquiry". Nehemiah v. Athletics Congress of USA, 765 F.2d 42 (3d Cir. 1985). Because neither the presence of nor service on a trustee of a corporation are sufficient contacts to create general personal jurisdiction, defendant's contacts with New Jersey enumerated above do not amount to doing business in New Jersey sufficient for general personal jurisdiction consistent with "fair play and substantial justice." Helicopteros Nacionales de Colombia v. Hall, -U.S.-, 52 U.S.L.W. 4491 (1984); Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952); International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); Milliken v. Meyer, 311 U.S. 457, 463 (1940); Dollar Savings Bank v. First Security Bank of Utah, 746 F.2d 208 (3d Cir. 1982); Reliance Steel Productions Co. v. Watson Ess, Marshall & Enggas, 675 f.2d 587 (3d Cir. 1982); Scheidt v.

Young, 389 F.2d 58 (3d Cir. 1968); Meench v. Raymond Corp., 283 F. Supp. 68 (E.D. Pa. 1968).

Beachboard mentions that Columbia owns property in New Jersey, but does not expand upon this statement, either with

evidence supporting it or with his reasons for raising this point. I assume he hopes to show that this court has quasi in rem jurisdiction over Columbia through unspecified property holdings. In Shaffer v. Heitner, 433 U.S. 186, 209 (1977), the Court observed that "although the presence of defendant's property in a State might suggest the existence of other ties among the defendant, the State, and the litigation, the presence of property alone would not support the State's jurisdiction." Beachboard makes no attempt to show how this property is

related to his claim, or how its presence creates additional contacts with the state. Therefore, general personal jurisdiction based on the alleged property holdings of Columbia does not exist.

Specific personal jurisdiction could exist if an out-of-state defendant caused an in-state tort to occur that harmed a New Jersey resident, see Calder v. Jones, 456 U.S. 783 (1984); Reilly v. P.J. Wolff & Sohne, 374 F. Supp. 775 (D.N.J. 1974); Kane v. U.S.S.R., 267 F. Supp. 709 (E.D. Pa. 1967), aff'd, 394 F.2d 131 (3d Cir. 1968), or if the specific events underlying the litigation occured in New Jersey, see Gehling v. St. George's School of Medicine, Ltd., 73 F.2d 539, 543-44 (3d Cir. 1985); Bialek v. Racal-Milgo, Inc., 545 F. Supp. 25, 34-35 (S.D.N.Y. 1982). There is no indication in the record that Beachboard

was a resident of New Jersey at the time the alleged wrongs occured. Nor does Beachboard allege that the events underlying the present litigation occured in New Jersey. In fact, Columbia's unopposed assertion is that any claim Beachboard has against them did not arise from any contract made or to be performed in New Jersey,

from any business solicited in New Jersey and does not relate to or arise from any conduct by them in New Jersey. Based upon this evidence, specific personal jurisdiction does not exist. Since no personal jurisdiction exists, the complaint will be dismissed for lack of personal jurisdiction and I need not reach the remaining grounds on which dismissal is sought.

Finally, defendant's request for an injunction against Beachboard will

be denied. Columbia has not officially counterclaimed, without which it cannot request an injunction. If it had done so, of course, it would have subjected itself to this court's jurisdiction and waived its defense of lack of personal jurisdiction. This court can only act upon an injunction that is formally requested by a party who subjects himself to the authority of the court. See Fed. R. Civ. P. 65. Here, I have no power to grant an injunction.

As to defendant's request for the sanction of attorney's fees, I cannot say that to a certainty this pro se plaintiff's complaint is entirely duplicative and defendant's application will be denied. Typically, courts do not award attorney's fees against pro se parties. See WSM, Inc. v. Tennessee Sales Co., 709 F.2d 1084 (6th Cir. 1983); 1 M. Derfner & A. Wolf, Court Awarded

Attorney Fees ¶ 7.04[5][d] (1985). Plaintiff is forewarned, however, that if he continues to file actions against Columbia, any application for injunctive relief and sanctions may well be granted.

For the reasons expressed above, plaintiff's motion to strike Mr. Bushell's and Mr. Golden's appearances as counsel will

be denied, the amended complaint will be dismissed for lack of personal jurisdiction, and defendant's request for an injunction and attorneys fees will be denied.

The court will enter an appropriate order.

Maryanne Trump Barry

MARYANNE TRUMP BARRY, U.S.D.J.

Date: July 16, 1986

UNITED STATES DISTRICT

COURT

FOR THE DISTRICT OF NEW JERSEY

ROBERT BORIS BEACHBOARD, :

Plaintiff, :

v. :

THE TRUSTEES OF COLUMBIA UNIVERSITY: IN THE CITY OF NEW YORK, :

Defendant. :

Civil Action No. 85-365

ORDER

This matter being opened to the court on plaintiff's motion to strike the appearance of Mr. Bushell and Mr. Golden as counsel for defendant, and defendant's motions to dismiss the amended complaint and for injunctive relief and attorneys fees, and the court having considered same on the papers

submitted, without oral argument, pursuant to Fed.R.Civ.P. 78; and

For the reasons expressed in this court's opinion dated July 16th, 1986,

It is on this 16th day of July, 1986

ORDERED that plaintiff's motion is denied and defendant's motion to dismiss the amended complaint is granted; and it is further

ORDERED that defendant's motion for injunctive relief and attorneys fees is denied.

Maryanne Trump Barry

MARYANNE TRUMP BARRY

U.S.D.J.

Robert Beachboard